

# Exhibit D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- :

S9 09 Cr. 524 (JSR)

KONSTANTIN YAROSHENKO, et al., :

Defendants. :

- - - - -X

I, CHITO EVANGELISTA, pursuant to Title 28, United States Code, Section 1746, hereby declare under penalty of perjury:

1. I make this affidavit in response to the pre-trial motion to dismiss (and accompanying exhibits) filed by KONSTANTIN YAROSHENKO, the defendant, in the above-captioned matter.

2. The facts in this affidavit are based upon my own personal observations, as well as my review of United States Department of Justice, Federal Bureau of Prisons ("BOP") records and my conversations with BOP officials. Since this affidavit is made for the limited purpose of responding to KONSTANTIN YAROSHENKO's pre-trial motions, I have not set forth each and every fact learned during my interaction with YAROSHENKO. Unless otherwise indicated, where actions, conversations and statements of others are related herein, they are related in substance and in part.

3. I am employed as a Mid-Level Practitioner ("MLP") by the BOP, at the Metropolitan Correctional Center in New York, New York ("MCC"). I have held this position since 1996. Prior to this, I attended medical school in the Philippines and then conducted psychiatric research at a psychiatric research institute in Rockland County, New York, for approximately eight years.

4. As an MLP, I am responsible for providing a full range of primary care to MCC inmate patients, including, but not limited to: triage, clinical encounters, management of chronically ill patients, emergency medical care, medication administration, approved treatments and procedures appropriate to the clinical setting, and patient education.

5. In accordance with national policy, I conduct an initial assessment of newly committed inmates, upon their arrival at the MCC. The screening is to determine urgent medical, dental, and mental health care needs; signs of acute drug and alcohol intoxication or symptoms of withdrawal; restrictions on work assignments; and freedom from contagious infectious disease. See Program Statement 6031.01, Patient Care (Jan. 2005). In the event any newly committed inmate demonstrates a need for immediate medical attention, I refer the matter to an MCC physician, who determines whether the inmate can be appropriately treated at the facility, or whether the inmate should first be referred to an emergency room, in lieu of admitting them to the MCC.

6. As part of the above assessment, it is BOP practice to have newly committed inmates complete a medical intake form, which is known as a Form BP-360. This form contains a number of questions regarding the inmate's current health and medical history, all of which are relevant to determining whether the newly committed inmate has any medical issues that will need to be addressed during his/her stay at the MCC or that prevent him/her from being housed at the MCC.

7. Attached to this affidavit as Exhibit 1 are two documents. The first document is a true and correct copy of a medical intake form (the "Intake Form") (consisting of two pages) dated May 31, 2010, and signed by inmate KONSTANTIN YAROSHENKO. The second document is a true and correct copy of an intake screening form (the "Screening Form") (consisting of one page) dated June 1, 2010, and signed by myself. I recognize the Intake Form and the Screening Form because I was the MLP who conducted an assessment on KONSTANTIN YAROSHENKO at the MCC on June 1, 2010. The written content of the Intake Form and the Screening Form appears the same as it did on June 1, 2010, when I completed my assessment of YAROSHENKO; the Intake Form and the Screening Form have not been altered or otherwise changed since that date.

8. As is my usual practice, during my assessment of KONSTANTIN YAROSHENKO on June 1, 2010, I reviewed the answers YAROSHENKO had provided on the Intake Form, and I asked him certain follow-up questions. If necessary, I wrote on the Intake Form any additional, relevant information that YAROSHENKO provided to me during my assessment. For example, I made written notations next to the answers YAROSHENKO provided to questions 3 and 11 on the Intake Form. I also wrote down YAROSHENKO's height, weight, and blood pressure on the Intake Form.

9. After reviewing the Intake Form with KONSTANTIN

YAROSHENKO on June 1, 2010, and based on my own observation and assessment of YAROSHENKO's health, I determined that YAROSHENKO could be admitted to the MCC and could be housed in the MCC's general population. My conclusion is reflected on the Screening Form, which I signed on June 1, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on  
this 11 day of October 2010

New York, NY

   
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Chito Evangelista  
MLP, BOP

# EXHIBIT 1

Filed Under  
Seal